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VAN v ZAN

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HIGH COURT (KUALA LUMPUR) — JOINT DIVORCE PETITION NO WA-33JP-880–05 OF 2023
EVROL MARIETTE PETERS J
12 JUNE 2024

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Family Law — Divorce — Contempt — Application by petitioner wife pursuant to r 74 of Divorce and Matrimonial Proceedings Rules 1980 ('r 74') to cite petitioner husband for contempt of court — Whether petitioner wife correct to file application pursuant to r 74 instead of O 52 of Rules of Court 2012 ('O 52') — Whether there was inconsistency between r 74 and O 52 — Interpretation of word 'pending' in r 74 — Divorce and Matrimonial Proceedings Rules 1980 r 74 — Rules of Court 2012 O 52

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This was an application by the petitioner wife pursuant to r 74 of the Divorce and Matrimonial Proceedings Rules 1980 ('r 74'), to cite the petitioner husband for contempt of court for having breached a court order dated 21 June 2023 ('the court order'). The petitioners ('the parties') were married in 2012 and were blessed with two children. In May 2023, the parties filed a joint petition for divorce and agreed to several terms. The terms were incorporated into the court order. In February 2024, claiming that the petitioner husband had failed to comply with the terms of the court order pertaining to maintenance, the petitioner wife filed this application. The petitioner wife contended that: (a) by virtue of r 74, there was no necessity to comply with the procedure stipulated in O 52 of the Rules of Court 2012 ('O 52'); and (b) the term 'pending' in r 74 should be interpreted in accordance with the explanation provided in r 2(2) of the Divorce and Matrimonial Proceedings Rules 1980 and that court orders issued in matrimonial proceedings were not final, as the court retained supervisory jurisdiction and authority to modify these orders. The issues for determination were: (i) whether the petitioner wife was correct to file the application pursuant to r 74 instead of O 52; (ii) whether there was inconsistency between r 74 and O 52; and (iii) the interpretation of the word 'pending' in r 74.

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Held, dismissing the application:

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(1) None of the referenced cases had addressed the application of either r 74 or O 52 in committal proceedings. As a result, these authorities could not be relied upon to support the proposition that r 74 superseded O 52 in committal proceedings in the family court (see paras 17 & 23).

(2) There was no inconsistency or conflict between r 74 and O 52. The difference between these provisions was purely procedural. Although r 74 lacked the detailed procedural requirements found in O 52, this did not imply that the procedures for an application for committal could be disregarded by filing such an application under r 74. The doctrine of harmonious construction was applied to interpret r 74 and O 52 cohesively, and to conclude that the detailed procedures outlined in O 52 should be viewed as complementary to r 74. Applying the doctrine of harmonious construction was crucial due to the importance of procedural safeguards in committal applications, given the seriousness of such proceedings (see paras 24–25 & 28).

(3) Orders granted in matrimonial proceedings were conclusive once a final order was made. Although applications to vary a final order were permitted, they were limited to terms relating to custody and maintenance. As in any other matter, applications to initiate committal proceedings were allowed. Additionally, applications to enforce court orders were permitted in matrimonial proceedings. However, these applications did not diminish the finality of the order. If the argument of the petitioner wife that matrimonial proceedings were always 'pending' and never concluded was accepted, it would render the term 'pending' in r 74 redundant. The matrimonial proceedings reached a conclusion in June 2023 upon the court order which was granted on terms mutually agreed upon by the parties in a joint petition. Consequently, there were no outstanding matters awaiting resolution in court, thus reinforcing the determination that r 74 held no relevance in this instance (see paras 46–47 & 49).

[Bahasa Malaysia summary

Ini adalah permohonan oleh pempetisyen isteri menurut k 74 Kaedah-Kaedah Prosiding Perceraian dan Perkahwinan 1980 ('k 74'), untuk menyaman pempetisyen suami kerana menghina mahkamah kerana telah melanggar perintah mahkamah bertarikh 21 Jun 2023 ('perintah mahkamah'). Pempetisyen ('pihak-pihak') telah berkahwin pada 2012 dan dikurniakan dua anak. Pada Mei 2023, pihak-pihak memfailkan petisyen bersama untuk perceraian dan bersetuju dengan beberapa terma. Terma telah dimasukkan ke dalam perintah mahkamah. Pada Februari 2024, dengan mendakwa bahawa pempetisyen suami telah gagal mematuhi terma perintah mahkamah berkaitan nafkah, pempetisyen isteri memfailkan permohonan ini. Pempetisyen isteri berpendapat bahawa: (a) menurut kuasa k 74, tidak ada keperluan untuk mematuhi prosedur yang ditetapkan dalam A 52 Kaedah-Kaedah Mahkamah 2012 ('A 52'); dan (b) istilah 'belum selesai' dalam k 74 hendaklah ditafsirkan mengikut penjelasan yang diperuntukkan dalam k 2(2) Kaedah-Kaedah Prosiding Perceraian dan Perkahwinan 1980 dan bahawa perintah mahkamah yang dikeluarkan dalam prosiding perkahwinan adalah tidak muktamad,

kerana mahkamah mengekalkan bidang kuasa penyeliaan dan kuasa untuk mengubah suai perintah ini. Isu-isu untuk penentuan adalah: (i) sama ada pempetisyen isteri adalah betul untuk memfailkan permohonan menurut k 74 dan bukannya A 52; (ii) sama ada terdapat ketidakselarasan antara k 74 dan A 52; dan (iii) tafsiran perkataan 'belum selesai' dalam k 74.

Diputuskan, menolak permohonan:

(1) Tiada satu pun daripada kes yang dirujuk telah membincangkan pemakaian sama ada k 74 atau A 52 dalam prosiding komital. Akibatnya, autoriti ini tidak boleh disandarkan untuk menyokong cadangan bahawa k 74 menggantikan A 52 dalam prosiding komital di mahkamah keluarga (lihat perenggan 17 & 23).

(2) Tiada ketidakselarasan atau percanggahan antara k 74 dan A 52. Perbezaan antara peruntukan ini adalah semata-mata prosedural. Walaupun k 74 tidak mempunyai keperluan prosedur terperinci yang terdapat dalam A 52, ini tidak bermakna bahawa prosedur untuk permohonan komital boleh diabaikan dengan memfailkan permohonan sedemikian di bawah k 74. Doktrin pembinaan harmoni telah digunakan untuk mentafsir k 74 dan A 52 secara bersama-sama, dan untuk membuat kesimpulan bahawa prosedur terperinci yang digariskan dalam A 52 harus dilihat sebagai pelengkap kepada k 74. Menggunakan doktrin pembinaan harmoni adalah penting kerana kepentingan perlindungan prosedur dalam permohonan komital, memandangkan keseriusan prosiding tersebut (lihat perenggan 24–25 & 28).

(3) Perintah yang diberikan dalam prosiding perkahwinan adalah muktamad sebaik sahaja perintah akhir dibuat. Walaupun permohonan untuk mengubah perintah akhir dibenarkan, ia terhad kepada syarat yang berkaitan dengan jagaan dan nafkah. Seperti dalam mana-mana perkara lain, permohonan untuk memulakan prosiding komital dibenarkan. Selain itu, permohonan untuk menguatkuasakan perintah mahkamah dibenarkan dalam prosiding perkahwinan. Walau bagaimanapun, permohonan ini tidak mengurangkan kemuktamadan perintah itu. Jika hujahan pempetisyen isteri bahawa prosiding perkahwinan sentiasa 'belum selesai' dan tidak pernah disimpulkan diterima, ia akan menjadikan istilah 'belum selesai' dalam k 74 berlebihan. Prosiding perkahwinan mencapai kesimpulan pada Jun 2023 atas perintah mahkamah yang diberikan atas terma yang dipersetujui bersama oleh pihak-pihak dalam petisyen bersama. Akibatnya, tiada perkara tertunggak yang menunggu penyelesaian di mahkamah, sekali gus mengukuhkan penentuan bahawa k 74 tidak relevan dalam hal ini (lihat perenggan 46–47 & 49).]

Cases referred to

Abdullah bin Atan v PP and other appeals [2020] 6 MLJ 727, FC (refd)
ABC v DEF [2024] MLJU 1657, HC (not folld)
Ang Gee Guan v Janice Ng Kerh Chin [2022] MLJU 2574; [2022] MLRHU 2215, HC (refd)
B (JA) (an infant), Re [1965] Ch 1112; [1965] 2 All ER 168, Ch D (refd)
Bramblevale Ltd, Re [1969] 3 All ER 1062; [1970] Ch 128, CA (refd)
Chanel Ltd v FGM Cosmetics [1981] FSR 471 (refd)
Chiltern District Council v Keane [1985] 2 All ER 118, CA (refd)
Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo [2002] 2 MLJ 97, CA (refd)
Ong Gim Huat v Toh Suan Lin Amy [1992] 2 MLJ 610; [1992] 4 MLRH 285, HC (refd)
Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor [2012] 2 MLJ 8, FC (refd)
Lim Phin Khian v Kho Su Ming [1996] 1 MLJ 1; [1996] 1 CLJ 529, FC (refd)
London Borough of Wandsworth v Lennard [2019] EWHC 1552 (Fam) (refd)
McIlraith v Grady [1968] 1 QB 468, CA (refd)
Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar [2020] 1 MLJ 141, FC (refd)
Protasco Bhd v Tey Por Yee & Anor and other appeals [2021] 6 MLJ 1, FC (refd)
Robinder Singh Jaj a/l Bijir Singh v Jasminder Kaur a/p Bhajan Singh [2024] 2 MLJ 126, FC (refd)
Sultana Begum v Prem Chand Jain AIR 1997 SC 1006, SC (refd)
Tan Bee Ang v Siew Chee Choong [2011] 3 MLRH 33, HC (distd)
Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors [2012] 3 MLJ 458, FC (refd)

Legislation referred to

Bankers' Books (Evidence) Act 1949 s 7
Courts of Judicature Act 1964 s 96(a)
Divorce and Matrimonial Proceedings Rules rr 2(2), 24, 74
Law Reform (Marriage and Divorce) Act ss 61, 77, 83, 96, 108
Legal Profession Act 1976 s 103E(5)
National Language Acts 1963/1967 s 8
Rules of Court 2012 O 1 r 1(2), O 13, O 24, O 42, O 52, O 52 r 3(2), O 92
Rules of the High Court 1980 (repealed by Rules of Court 2012) O 52

Petitioner husband absent.
YN Foo (with Kiran Dhaliwal) (YN Foo & Co) for the petitioner wife.

Evrol Mariette Peters J:

INTRODUCTION

[1] This was an application in encl 13 ('this application') by the petitioner-wife pursuant to r 74 of the Divorce and Matrimonial Proceedings Rules 1980 (Divorce and Matrimonial Proceedings Rules), to cite the petitioner-husband for contempt of court for having breached a court order dated 21 June 2023 ('the court order').

[2] Due to the privacy concerns of the parties involved in this application and the sensitivity of the issues at hand, the petitioner-husband and petitioner-wife have been anonymised as VAN and ZAN respectively.

THE FACTUAL BACKGROUND

[3] The petitioners ('the parties') were married in 2012 and were blessed with two children, born respectively in 2013 and 2017.

[4] In May 2023, the parties filed a joint petition for divorce and agreed to several terms. The terms were incorporated into the court order.

[5] In February 2024, claiming that the petitioner-husband had failed to comply with the terms of the court order pertaining to maintenance, the petitioner-wife filed this application via summons in chambers, pursuant to r 74 of the Divorce and Matrimonial Proceedings Rules.

THE ISSUES

[6] The main issue for consideration was whether the petitioner-wife was correct to file this application pursuant to r 74 of the Divorce and Matrimonial Proceedings Rules ('r 74') instead of O 52 of the Rules of Court 2012 ('O 52').

[7] Following the main issue, the court had to address whether there was inconsistency between r 74 and O 52, and the interpretation of the word 'pending' in r 74.

[8] This application was dismissed for the following reasons.

CONTENTIONS, EVALUATION, AND FINDINGS

Whether r 74 prevails over O 52

[9] The petitioner-wife contended that by virtue of r 74, there was no

necessity to comply with the procedure stipulated in O 52. Both provisions are compared in Table A below:

Table A

Rule 74 — Committal and injunction	Order 52 — Committal
(1) Notwithstanding anything to the contrary, an application for an order of committal in matrimonial proceedings pending in the High court shall be made by summons and shall be heard in open court. (2) Where no judge is conveniently available to hear the application then, an application for — (a) the discharge of any person committed; or (b) the discharge by consent of an injunction granted by a judge, may be made to the registrar who may, if satisfied of the urgency of the matter and that it is expedient to do so, make any order on the application which a judge could have made.	Rule 1 — Definition In this Order 'Court' means the High Court, Sessions Court and Magistrates' Court; 'Judge' means a High Court Judge, Sessions Court Judge or Magistrate. Rule 2 — Committal for contempt of Court The Court may, on the application of any party to any cause or matter or on its own motion, make an order of committal in Form 107. Rule 2A — Contempt committed in the face of the Court (1) If a contempt is committed in the face of the Court, it shall not be necessary to serve a formal notice to show cause, but the Court shall ensure that the person alleged to be in contempt understands the nature of the offence alleged against him and has the opportunity to be heard in his own defence, and the Court shall make a proper record of the proceedings. (2) Where a Judge is satisfied that a contempt has been committed in the face of the Court, the Judge may order the contemnor to appear before him on the same day at the time fixed by the Court for the purpose of purging his contempt. (3) Where such person has purged his contempt by tendering his unreserved apology to the Court and the Judge considers the contempt to be not of a serious nature, the Judge may excuse such person and no further action shall be taken against him.

	(4) Where such person declines or refuses to purge his contempt, then the Judge shall sentence him. Rule 2B — Other cases of contempt In all other cases of contempt of Court, a formal notice to show cause why he should not be committed to the prison or fined shall be served personally. Rule 3 — Application to Court (1) No application to a Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule. (2) An application for such leave must be made ex parte to the Court by a notice of application supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on. Rule 4 — Application for order after leave to apply granted (1) When leave has been granted under rule 3 to apply for an order of committal, the application for the order must be made by notice of application to the Court, and, unless the Court granting leave has otherwise directed, there must be at least eight clear days between the service of the notice of application and the day named therein for the hearing. (2) Unless within fourteen days after such leave was granted the notice of application is filed, the leave shall lapse. (3) Subject to paragraph (4), the notice, accompanied by a copy of the statement and affidavit in support of the application for leave under rule 3 and the order granting such leave, must be served personally on the person sought to be committed. (4) Without prejudice to the powers of the Court or Judge under Order 62, rule 5, the Court or Judge may dispense with service of the notice under this rule if it or he thinks it just to do so.

	Rule 5 — Saving for power to commit without application for purpose Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order of committal of its own motion against a person guilty of contempt of Court. Rule 6 — Provisions as to hearing (1) Subject to paragraph (2), the Court hearing an application for an order of committal may sit in private or in Chambers in the following cases: (a) where the application arises out of proceedings relating to the wardship or adoption of an infant or wholly or mainly to the guardianship, custody, maintenance or upbringing of an infant, or rights of access to an infant; (b) where the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health Act 2001; (c) where the application arises out of proceedings in which a secret process, discovery or invention was in issue; (d) where it appears to the Court that in the interests of the administration of justice or for reasons of national security the application should be heard in private, but, except as aforesaid, the application shall be heard in open Court. (2) If the Court hearing an application in private or in Chambers by virtue of paragraph (1) decides to make an order of committal against the person sought to be committed, it shall in open Court state — (a) the name of that person; (b) in general terms, the nature of the contempt of Court in respect of which the order of committal is being made; and (c) if he is being committed for a fixed period, the length of that period. (3) Except with the leave of the Court hearing an application for an order of committal, no grounds shall be relied upon at the hearing except the grounds set out in the statement under rule 3. The foregoing provision is without prejudice to the powers of the Court under Order 20, rule 8.

	(4) If on the hearing of the application the person sought to be committed expresses a wish to give oral evidence on his own behalf, he shall be entitled to do so. Rule 6A — Contempt committed by corporation If a corporation is guilty of contempt of Court, the Court may fine the corporation or punish any officer of the corporation who caused or wilfully permitted or contributed to the contempt of Court or fine the corporation and punish the officer. Rule 7 — Power to suspend execution of committal order (1) The Court by whom an order of committal is made may by order direct that the execution of the order of committal shall be suspended for such period or on such terms or conditions as it may specify. (2) Where execution of an order of committal is suspended by an order under paragraph (1), the applicant for the order of committal must, unless the Court otherwise directs, serve on the person against whom it was made a notice informing him of the making and terms of the order under that paragraph Rule 8 — Discharge of person committed (1) The Court may, on the application of any person committed to prison for any contempt of Court, discharge him. (2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other person or to deposit it in Court or elsewhere, then, if the thing is in the custody or power of the person committed, the Sheriff in the High Court or the bailiff in the Subordinate Court, as the case may be, may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for dealing with the thing taken by the Sheriff or the bailiff as it thinks fit. Rule 9 — Saving for other powers

	Nothing in the foregoing provisions of this Order shall be taken as affecting the power of the Court to make an order requiring a person guilty of contempt of Court, or a person punishable by virtue of any written law in like manner as if he had been guilty of contempt of the Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal. Rule 10 — Form of warrant of committal A warrant for committal must be in Form 108

[10] A comparison between r 74 and O 52 highlights distinct procedural differences. Rule 74 requires only the filing of a summons in chambers along with a supporting affidavit. In contrast, O 52 stands out for its meticulous detail and organisation, comprising 13 distinct rules. These rules are systematically divided into two structured stages: the leave stage and the post-leave stage.

[11] At the leave stage, an applicant must file the following documents, namely, a notice of application for leave, a statement detailing the contempt pursuant to O 52 r 3(2) of the Rules of Court, and an affidavit verifying the facts.

[12] Once leave is granted, the applicant may then proceed to file an application for contempt. This stage requires submitting additional documents, including the court order granting leave, the application for contempt, the statement under O 52 r 3(2) of the Rules of Court, and an affidavit verifying the facts. It is undeniable that O 52 meticulously outlines the steps for initiating a committal application, emphasising the mandatory requirement to obtain leave first.

[13] It is undeniable that this bifurcated structure in O 52 ensures clarity and precision, guiding litigants through a well-defined legal process from start to finish.

[14] The petitioner-wife's argument was grounded in the legal maxim *generalia specialibus non derogant*, which means that when interpreting two conflicting statutes, the provisions of a general statute must yield to those of a more specific one. She asserted that r 74 and O 54 were in conflict and argued that r 74, as the more specific provision, should take precedence. To bolster her

contention, counsel for the petitioner-wife cited O 1 r 1(2), and O 94 r 2(2) of the Rules of Court, both of which read:

> Order 1 — Citation, application, interpretation and forms
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> Rule 2 — Application
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> (2) These Rules do not have effect in relation to proceedings in respect of *which rules have been or may be made under any written law for the specific purpose of such proceedings* or in relation to any criminal proceedings.
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> ...
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> Order 94 — Repeal, saving and transitional provisions
>
> Rule 2 — Exception
>
> (2) In the event of any inconsistency, *the rules under the written laws in Appendix C shall prevail* over these Rules. (Emphasis added.)

[15] Matrimonial proceedings are listed as item 5 in Appendix C, which pertains to the Law Reform (Marriage and Divorce) Act 1976 ('the Law Reform (Marriage and Divorce) Act'). This includes the Divorce and Matrimonial Proceedings Rules, which were enacted pursuant to s 108 of the Law Reform (Marriage and Divorce) Act. The relevant section reads:

> Section 108 — *Power to make rules*
>
> (1) The Rules Committee may make rules regulating the practice and procedure in all matrimonial proceedings under this Act as they consider expedient and also rules to fix and regulate the fees and costs payable upon all such proceedings; and subject thereto all proceedings under this Act shall be regulated by the Divorce and Matrimonial Proceedings Rules 1980.
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> (2) The Minister may make rules for the purposes of this Act and, without prejudice to the generality of the foregoing, such rules may provide for —
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> (a) prescribing the manner in which the Registrars shall exercise the powers conferred on them by this Act;
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> (b) the form of marriage registers and certificates of marriage and the mode in which the same are to be kept;
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> (c) the mode in which the Registrar General, the Superintendent Registrars, the Registrars and Assistant Registrars shall keep certificates of marriage, marriage registers and indices thereof;
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> (d) the supply and the safe custody of marriage registers, Registrars' note-books and all declarations made for the purposes of this Act;
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> (e) the preparation and submission of returns of marriages solemnised in Malaysia and abroad and of marriages registered under this Act;
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> (f) the forms of any certificates, notices or other documents required for the purpose of carrying out this Act;
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> (g) the making of searches and the giving of certified copies;

(h) fixing the fees chargeable for the purposes of this Act.

[16] In relying on the legal maxim *generalia specialibus non derogant*, counsel for the petitioner-wife relied on the following cases, namely Federal Court cases of *Robinder Singh Jaj a/l Bijir Singh v Jasminder Kaur a/p Bhajan Singh* [2024] 2 MLJ 126, *Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor* [2012] 2 MLJ 8, and *Protasco Bhd v Tey Por Yee & Anor and other appeals* [2021] 6 MLJ 1, and *Ong Gim Huat v Toh Suan Lin Amy* [1992] 2 MLJ 610; [1992] 4 MLRH 285, and *Ang Gee Guan v Janice Ng Kerh Chin* [2022] MLJU 2574; [2022] MLRHU 2215.

[17] I was unable to accept the contention of the petitioner-wife and her counsel's reliance on the above-cited cases for several reasons. Firstly, none of the referenced cases had addressed the application of either r 74 or O 52 in committal proceedings.

[18] In the case of *Robinder Singh Jaj a/l Bijir Singh v Jasminder Kaur a/p Bhajan Singh*, the core issue was whether cause papers in matrimonial proceedings could be filed exclusively in English. This necessitated examining the validity of Registrar's Circular No 5 of 1990 and Circular No 153 of 2019, in contrast to Practice Direction No 2 of 1990 and s 8 (Language of Courts) of the National Language Acts 1963/1967. Ultimately, the case centred on determining whether the Divorce and Matrimonial Proceedings Rules had precedence over O 92 of the Rules of Court in relation to the language prescribed.

[19] In *Lau Keen Fai v Lim Ban Kay @ Lim Chiam Boon & Anor*, the appellant was found guilty of fraudulent conduct by the Advocates and Solicitors Disciplinary Board (ASDB) in relation to a loan transaction involving the first respondent. The appellant's subsequent appeal to the High Court was dismissed, as was his further appeal to the Court of Appeal. The primary issue in question was whether it was necessary to seek leave to appeal to the Federal Court. This raised the matter of reconciling the inconsistency between s 96(a) of the Courts of Judicature Act 1964 and s 103E(5) of the Legal Profession Act 1976, both of which read:

> Courts of Judicature Act 1964
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> Section 96 — *Conditions of appeal*
>
> Subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal, *an appeal shall lie from the Court of Appeal to the Federal Court with the leave of the Federal Court —*
>
> (a) *from any judgment or order of the Court of Appeal* in respect of any civil cause or matter decided by the High Court in the exercise of its original jurisdiction; involving a question of general principle decided for the first

time or a question of importance upon which further argument and a decision of the Federal Court would be to public advantage;

...

Legal Profession Act 1976

Section 106E — *Appeal from the final order or decision of the Disciplinary Board*

...

(5) Any appeal against the decision of the High Court *shall lie to the Court of Appeal and thereafter to the Federal Court.* (Emphasis added.)

[20] In *Protasco Bhd v Tey Por Yee & Anor and other appeals*, the Federal Court examined the court's power to issue orders for discovery, inspection, and the production of bankers' books. The central question was whether s 7 (*Court or Judge may order inspection*) of the Bankers' Books (Evidence) Act 1949 took precedence over O 24 (*Discovery and inspection of documents*) r 7 (*Order for discovery of particular documents*) of the Rules of Court.

[21] Also in relation to discovery applications, the court in *Ong Gim Huat v Toh Suan Lin Amy* [1992] 2 MLJ 610; [1992] 4 MLRH 285 deliberated on whether such applications should be made under O 24 of the Rules of Court or under r 24 (*Discovery of documents in defended cause*) of the Divorce and Matrimonial Proceedings Rules. This addressed the appropriate procedural framework for discovery in different contexts within legal proceedings.

[22] In *Ang Gee Guan v Janice Ng Kerh Chin* [2022] MLJU 2574; [2022] MLRHU 2215, the court examined whether an application to set aside a decree nisi should be made under s 61 (*Decree nisi and proceedings thereafter*) of the Law Reform (Marriage and Divorce) Act or under O 13 (*Default of appearance to writ*) and O 42 (*Judgments and Orders*) of the Rules of Court.

[23] Additionally, it was evident that none of the cases cited by counsel referenced r 74 or O 52. As a result, these authorities could not be relied upon to support the proposition that r 74 superseded O 52 in committal proceedings in the family court.

Whether there was inconsistency between r 74 and O 52

[24] In any event, I took the view that there is no inconsistency or conflict, to begin with, between r 74 and O 52. The difference between these provisions is purely procedural. Rule 74 requires an application for committal proceedings to be made by way of summons, whereas O 52 requires it to be made by notice of application. Although r 74 lacks the detailed procedural requirements found in O 52, this does not imply that the procedures for an application for committal can be disregarded by filing such an application

A under r 74.

[25] Therefore, I applied the doctrine of harmonious construction to interpret r 74 and O 52 cohesively, and to conclude that the detailed procedures outlined in O 52 should be viewed as complementary to r 74.

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[26] The doctrine of harmonious construction was elucidated by Zawawi Salleh FCJ in *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar* [2020] 1 MLJ 141, in the following passages:

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> ... To put it simply, the doctrine of harmonious construction means a statute *should be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.* Such an interpretation is beneficial in avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. The five main principles of this doctrine/rule are as follows:
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> (i) the court must avoid a head on clash of seemingly contradictory provisions and they must construe the contradictory provisions so to harmonise them (see *Commissioner of Income Tax v Hindustan Bulk Carriers* [2002] 3 SCC 57, p 74);
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> (ii) the provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its efforts, is unable to find a way to reconcile their differences;
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> (iii) when it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way that effect is given to both provisions as much as possible (see *Sultana Begum v Prem Chand Jain* AIR 1997 SC 1006, pp 1009, 1010);
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> (iv) courts must also keep in mind that interpretation that reduces one provision to useless or dead lumber is not harmonious construction (see *Commissioner of Income Tax v Hindustan Bulk Carriers* [2002] 3 SCC 57, p 74); and
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> (v) to harmonise is not to destroy any statutory provision or to render it fruitless.
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> [79] In a nutshell, the doctrine requires that the legislation be construed in a way which would achieve a harmonious result, and that construction should favour coherence in the law. (Emphasis added.)

[27] The case of *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar* [2020] 1 MLJ 141 was followed subsequently by the Federal Court in *Abdullah bin Atan v Public Prosecutor and other appeals* [2020] 6 MLJ 727.

I

[28] In the present case, applying the doctrine of harmonious construction was crucial due to the importance of procedural safeguards in committal applications, given the seriousness of such proceedings. Such importance was explained in *Tan Sri Dato' (Dr) Rozali Ismail & Ors v Lim Pang Cheong @ George Lim & Ors* [2012] 3 MLJ 458 by Arifin Zakaria CJM (as he then was), referencing decisions in *Re B (JA) (an infant)* [1965] Ch 1112; [1965] 2 All ER 168, *McIlraith v Grady* [1968] 1 QB 468, *Re Bramblevale Ltd* [1969] 3 All ER 1062; [1970] Ch 128, *Chanel Ltd v FGM Cosmetics* [1981] FSR 471, and *Chiltern District Council v Keane* [1985] 2 All ER 118. His Lordship highlighted, in the following passages, the importance of procedural requirements such as obtaining leave to initiate committal proceedings, and the necessity for the O 52 statement:

> [29] It is settled law that committal proceeding is criminal in nature since it involves the liberty of the alleged contemnor. Premised upon that, the law has provided procedural safeguards in committal proceeding which requires strict compliance. In this regard, Cross J in *Re B (JA) (An Infant)* [1965] 1 Ch 1112 had this to say:
>
> > *Committal is a very serious matter. The courts must proceed very carefully before they make an order to commit to prison; and rules have been laid down to secure that the alleged contemnor knows clearly what is being alleged against him and has every opportunity to meet the allegations.* For example, it is provided that there must be personal service of the motion on him even though he appears by solicitors, and that the notice of motion must set out the grounds on which he is said to be in contempt; further, he must be served as well as with the motion, with the affidavits which constitute the evidence in support of it.
> >
> > *It is clear that if safeguards such as these have not been observed in any particular case, then the process is defective even though in the particular case no harm may have been done.* For example, if the notice has not been personally served the fact that the respondent knows all about it, and indeed attends the hearing of the motion, makes no difference. In the same way, as is shown by *Taylor v Roe*, if the notice of motion does not give the grounds of the alleged contempt or the affidavits are not served at the same time as the notice of motion, that is a fatal defect, even though the defendant gets to know everything before the motion comes on, and indeed answers the affidavits.
> >
> > When, however, one passes away from safeguards which are laid down in the interests of the contemnor and comes to consider mere verbal deficiencies in the documents in question — cases where the documents do not comply strictly with the rules, but it is impossible that in any conceivable case the contemnor could be in any way prejudiced by the defects — then it seems to me that there is no reason why the courts should be any slower to waive such technical irregularities in a committal proceeding than they would be in any other proceeding. (Emphasis added.)
>
> [30] In similar tone, Lord Denning MR in *McIlraith v Grady* [1968] 1 QB 468 said at p 477:
>
> > The second appeal is as to the committal order. Here we must remember the fundamental principle that no man's liberty is to be taken away unless every

requirement of the law has been strictly complied with.

[31] Later, in *Re Bramblevale Ltd* [1969] 3 All ER 1062; [1970] Ch 128 , Lord Denning MR reaffirmed the same and had this to say:

> A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. (See Lord Denning MR at p 137.)

[32] In *Chanel Ltd v FGM Cosmetics* [1981] FSR 471 Whitford J was reported to refuse an order of committal as he found the notice of motion for committal before him to be bad because it failed on its face to specify the precise breaches of the undertaking of which the plaintiffs complained.

[33] The same spirit was echoed in *Chiltern District Council v Keane* [1985] 2 All ER 118, where Sir Donaldson MR at p 119 made this observation:

> However, where the liberty of the subject is involved, this court has time and again asserted that the procedural rules applicable must be strictly complied with.

The Safeguards Under O 52 of the RHC

[34] The procedural law on committal in our law is laid down in O 52 of the RHC which is based on the then O 52 of the English Rules of Supreme Court 1965 (Revision 1965). It provides that no application for a committal order can be made without leave of the court. The application for such leave must be made in accordance with O 52 r 2 of the RHC.

[35] For ease reference, r 2 is reproduced below:

> 2 (1) No application to a Court for an order of committal against any person may be made unless leave to make such an application has been granted in accordance with this rule.
>
> (2) An application for such leave must be made *ex parte* to the Court, except in vacation when it may be made to a Judge in Chambers, and *must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.* (Emphasis added.)

[36] The safeguards in r 2(2) entail the application to be supported by a statement describing amongst others, the person sought to be committed and the grounds on which he is alleged to be in contempt. It must be supported by an affidavit verifying the facts relied on in the statement.

[37] We wish to state in clear terms that the alleged act of contempt must be adequately described and particularised in detail in the statement itself. The accompanying affidavit is only to verify the facts relied in that statement. It cannot add facts to it. Any deficiency in the statement cannot be supplemented or cured by any further affidavit at a later time. The alleged contemnor must at once be given full knowledge of what charge he is facing so as to enable him to meet the charge. This must be done within the four walls of the statement itself. The same approach was taken by the Supreme Court in *Arthur Lee Meng Kwang* case (see also *Syarikat*

M Mohamed v Mahindapal Singh & Ors [1991] 2 MLJ 112; [1991] 1 CLJ 582; [1991] 4 CLJ Rep 16). (Emphasis added.)

[29] The petitioner-wife argued that the petitioner-husband was aware of the hearing for this application but deliberately chose not to attend. In support of this claim, she referenced a *WhatsApp* message dated 1 March 2024, in which the petitioner-husband explicitly stated the following:

> I won't be attending as you are aware I'm not in the country and trying to get a job. I'm not wasting money on lawyers. If this proceeds all payments will stop and your father can pay for all the expenses moving forward.

[30] The petitioner-wife asserted that the petitioner-husband's intentional refusal to attend court constituted contempt of court and a violation of the court order. Consequently, she argued that the court should impose a sanction of imprisonment on the petitioner-husband.

[31] It was undisputed that the petitioner-husband had provided a valid explanation for his absence, stating that he was not in the country. Furthermore, the petitioner-wife had failed to comply with the procedural requirements outlined in O 52. Without adhering to these necessary procedures, it was unreasonable to expect the petitioner-husband to comply with her demand to attend court. Therefore, her request cannot be justified under the circumstances.

[32] The petitioner-wife contended that bearing in mind that the Law Reform (Marriage and Divorce) Act is a social legislation, the court should take into account all facts and circumstances of the case. In support thereof, counsel for the petitioner-wife cited the following words by Siti Norma Yaakob JCA from the Court of Appeal case of *Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo* [2002] 2 MLJ 97:

> This is so as we acknowledge the Act to be a piece of social legislation for which a liberal interpretation is more apt than a strict one.

[33] In my opinion, counsel for the petitioner-wife has taken these words out of context. They were originally stated in the context of interpreting s 77 of the Law Reform (Marriage and Divorce) Act, specifically addressing whether the trial judge erred by rigidly refusing to grant maintenance based on a literal interpretation of the provision. Therefore, the case of *Diana Clarice Chan Chiing Hwa v Tiong Chiong Hoo* cannot be cited as a precedent to interpret r 74 so liberally that the safeguards in O 52 are disregarded. This is particularly relevant since the petitioner-wife had specifically requested the petitioner-husband be committed to prison.

[34] It was crucial to remember that, as in any court, committal proceedings in a family court can result in the deprivation of an individual's liberty. Being committed to custody is a severe sanction with profound consequences, including loss of freedom, potential employment repercussions, and social stigma.

[35] Committal proceedings in a family court can also significantly impact family dynamics. For example, the imprisonment of a parent for non-compliance with a court order can have emotional and psychological effects on children. This underscores the seriousness of committal proceedings, as courts must carefully balance enforcement with the potential impact on family relationships.

[36] In cases involving financial obligations like child or spousal maintenance, committal proceedings can have substantial economic consequences for both the non-compliant party as well as the recipient.

[37] Furthermore, the outcome of committal proceedings can set important legal precedents, influencing future cases and shaping the behaviour of individuals in similar situations. This helps to develop and clarify the law, providing guidance for both the judiciary and the public. It would result in abuse if r 74 required only a summons accompanied by an affidavit. Even in English cases on committal applications, strict compliance with the rules pertaining to contempt proceedings is demanded, regardless of whether these proceedings occur in family court. This is evidenced by cases such as *London Borough of Wandsworth v Lennard* [2019] EWHC 1552 (Fam) and *Re L (A Child)* [2016] EWCA Civ 173.

[38] The petitioner-wife had relied on two authorities, which she claimed had dealt with r 74, namely *ABC v DEF* [2024] MLJU 1657 and *Tan Bee Ang v Siew Chee Choong* [2011] 3 MLRH 33.

[39] I took the view that these cases were unsuitable as authorities to contend that r 74 prevails over O 52, for the following reasons. Firstly, as no grounds of judgment were provided in the case of *ABC v DEF*, it would be unfair to speculate on the rationale behind the learned judge's decision to apply r 74.

[40] Regarding *Tan Bee Ang v Siew Chee Choong*, that case did not address the application of r 74. A detailed examination would reveal that the issue in that case was whether a decree nisi, once made absolute, could be amended. The learned judge, in that case, had previously heard a committal application under O 52 of the then Rules of the High Court 1980, which she had dismissed due to the absence of a penal notice. The judge explained her decision as follows:

> ... r 74 of the Divorce and Matrimonial Proceedings Rules 1980 ('the DMP Rules') allows committal proceedings *in a less technical manner where there is no specific requirement of a penal indorsement as provided in* O 45 r 7(4) of the RHC 1980. A party can choose whether to commence committal proceedings under r 74 of the DMP Rules or under O 45 r 7(4) and O 52 of the RHC 1980.'
>
> In this case, based on the previous committal proceedings taken by the petitioner in encl 41, *it is clear that the petitioner prefers to go under O 45 and O 52 of the RHC 1980, and not r 74 of the DMP Rules.* That being the case, for proper and effective enforcement by way of committal proceedings, a penal indorsement as required by O 45 r 7(4) of the RHC 1980 is necessary. (Emphasis added.)

[41] Thus, an analysis of *Tan Bee Ang v Siew Chee Choong* showed that the facts did not pertain to the application of r 74. Even if r 74 was referred to by the learned judge, it was in the context of the absence of a penal notice, and not the detailed procedural safeguards found in O 52. Therefore, reliance on *Tan Bee Ang v Siew Chee Choong* was misconceived.

Interpretation of the word 'pending' in r 74

[42] My decision to dismiss this application was further reinforced by a reading of r 74 which clearly stipulates that it applies to committal applications in matrimonial proceedings only '*when such proceedings are pending* in the High Court'. The operative word here is 'pending.'

[43] In *Lim Phin Khian v Kho Su Ming* [1996] 1 MLJ 1; [1996] 1 CLJ 529, the Supreme Court, through Edgar Joseph Jr SCJ, clarified the meaning of 'pending' in the following passage:

> According to *Stroud's Judicial Dictionary* (4th Ed) Vol 4, p 1890, a legal proceeding is *'pending' as soon as commenced (on which see 5 Rep 47, 48; 7 Rep 30), and until it is concluded*, ie so long as the court having original cognisance of it can make an order on the matters in issue, or is to be dealt with, therein. The same approach was adopted by the Supreme Court of India when considering the question what is a pending legal proceeding (see *Asgarali Nazaran Singaporewalla v State of Bombay* AIR 1957 SC 502, 503, 509). And, in *SK Kashyap v The State of Rajashthan* AIR 1971 SC 1120, it was held that the answer to the question: *what is a pending matter? is: until the case is concluded it is pending.* (Emphasis added.)

[44] The petitioner-wife argued that the term 'pending' should be interpreted in accordance with the explanation provided in r 2(2) of the Divorce and Matrimonial Proceedings Rules, which specifically states:

> Rule 2 — *Interpretation*
>
> ...
>
> (2) Unless the context otherwise requires, *a cause begun by application shall be treated as pending for the purposes of these rules* notwithstanding that a final decree or order

A has been made on the petition. (Emphasis added.)

B **[45]** The petitioner-wife further contended that court orders issued in matrimonial proceedings are not final, as the court retains supervisory jurisdiction and authority to modify these orders. This power is exercised through applications to vary court orders filed under ss 83 and 96 of the Law Reform (Marriage and Divorce) Act.

C **[46]** I found this contention untenable. Orders granted in matrimonial proceedings are conclusive once a final order is made. Although applications to vary a final order are permitted, they are limited to terms relating to custody and maintenance. As in any other matter, applications to initiate committal proceedings are allowed. Additionally, applications to enforce court orders are permitted in matrimonial proceedings. However, these applications do not
D diminish the finality of the order.

E **[47]** If I were to accept the petitioner-wife's argument that matrimonial proceedings are always 'pending' and never concluded, it would render the term 'pending' in r 74 redundant. The provision would then read simply as 'an order of committal in matrimonial proceedings in the high court' rather than 'an order of committal in matrimonial proceedings pending in the high court'. The interpretation proposed by counsel for the petitioner-wife would undermine the rule's intended specificity and clarity.

F **[48]** In any case, the clarification provided in r 2(2) of the Divorce and Matrimonial Proceedings Rules pertains to the 'cause' that is considered pending due to a filed application, rather than the entirety of the 'matrimonial proceedings'.

G **[49]** In this particular case, the matrimonial proceedings reached a conclusion in June 2023 upon the court order which was granted on terms mutually agreed upon by the parties in a joint petition. Consequently, there were no outstanding matters awaiting resolution in court, thus reinforcing my
H determination that r 74 held no relevance in this instance.

CONCLUDING REMARKS

I **[50]** It was essential to recognise that allowing this application would establish a precedent for litigants to bypass the proper process for committal applications. Regardless of the sincerity of the petitioner-wife's intentions, if at all, in this application, such a shortcut would open the door to abuse and undermine the procedural safeguards established by the law, which have been reaffirmed by our highest court.

[51] In conclusion, considering the aforementioned reasons and a meticulous examination of the submission by counsel for the petitioner-wife, this application was dismissed, with liberty to file afresh.

Application dismissed.

Reported by Nabilah Syahida Abdullah Salleh